



March 30, 2001

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## ENGROSSED HOUSE BILL No. 1248

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DIGEST OF HB 1248 (Updated March 28, 2001 4:53 PM - DI 106)

**Citations Affected:** IC 27-1; IC 34-13; noncode.

**Synopsis:** Tort claims against governmental entities. Increases the combined aggregate liability of all governmental entities and public employees under the law concerning tort claims against governmental entities and public employees from \$300,000 to \$500,000 for injury to or death of one person in any one occurrence. Increases the claim limits for policies provided to participating political subdivisions by the political subdivision risk management commission from \$300,000 to \$500,000 for injuries, death, or damage suffered by any one person.

**Effective:** January 1, 2002.

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### Avery, Ulmer, Steele, Tinch

(SENATE SPONSORS — MEEKS R, ALEXA)

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January 9, 2001, read first time and referred to Committee on Judiciary.  
February 14, 2001, reported — Do Pass; referred to Committee on Ways and Means, pursuant to Rule 127.  
February 21, 2001, amended, reported — Do Pass.  
February 26, 2001, read second time, ordered engrossed.  
February 27, 2001, engrossed.  
March 5, 2001, read third time, passed. Yeas 74, nays 21.

#### SENATE ACTION

March 7, 2001, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.  
March 29, 2001, amended, reported favorably — Do Pass; reassigned to Committee on Finance.

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March 30, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## ENGROSSED HOUSE BILL No. 1248

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 27-1-29-14 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 14. (a) In order to  
3 be eligible for payment under this chapter, a liability of a political  
4 subdivision must arise out of a claim based upon an act or omission  
5 that takes place while the political subdivision is a member of the fund.

6 (b) The maximum amount payable from the fund for any liability,  
7 whether or not it is covered under IC 34-13-3 (or IC 34-4-16.5 before  
8 its repeal), is:

9 (1) ~~three five~~ hundred thousand dollars (~~\$300,000~~) (**\$500,000**) for  
10 injury, death, or damage suffered by any one (1) person as a result  
11 of the act or omission from which the liability arises; and

12 (2) one million dollars (\$1,000,000) for all injury, death, or  
13 damage suffered by all persons as a result of the act or omission  
14 from which the liability arises.

15 (c) No amount may be paid from the fund in respect of punitive  
16 damages paid by or assessed against a member of the fund.

17 (d) No amount may be paid from the fund in the case of a liability

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based upon bodily injury or property damage arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials, or other irritants, contaminants, or pollutants into or upon land, the atmosphere, or any watercourse or body of water unless the discharge, dispersal, release, or escape:

(1) is caused by an act or omission of a political subdivision that is a member of the fund; and

(2) occurs as a result of:

(A) a household hazardous waste; or

(B) a conditionally exempt small quantity generator (as described in 40 CFR 261.5(a);

collection, disposal, or recycling project conducted by or controlled by the political subdivision.

(e) The commissioner may pay a liability of a member of the fund in a series of annual payments. The amount of any annual payment under this subsection must be one hundred thousand dollars (\$100,000) or more, except for the final payment in a series of payments.

(f) The commission may negotiate a structured settlement of any claim.

(g) As used in this section, "household hazardous waste" means solid waste generated by households that consists of or contains a material that is:

(1) ignitable, as described in 40 CFR 261.21;

(2) corrosive, as described in 40 CFR 261.22;

(3) reactive, as described in 40 CFR 261.23; or

(4) toxic, as described in 40 CFR 261.24.

SECTION 2. IC 34-13-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 4. The combined aggregate liability of all governmental entities and of all public employees, acting within the scope of their employment and not excluded from liability under section 3 of this chapter, does not exceed ~~three~~ **five** hundred thousand dollars (~~\$300,000~~) (**\$500,000**) for injury to or death of one (1) person in any one (1) occurrence and does not exceed five million dollars (\$5,000,000) for injury to or death of all persons in that occurrence. A governmental entity is not liable for punitive damages.

SECTION 3. IC 34-13-3-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 20. (a) A political subdivision may purchase insurance to cover the liability of itself or its employees. Any liability insurance so purchased shall be purchased by invitation to and negotiation with providers of insurance and may be

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1 purchased with other types of insurance. If such a policy is purchased,  
2 the terms of the policy govern:

3 (1) the rights and obligations of the political subdivision and the  
4 insurer with respect to the investigation, settlement, and defense  
5 of claims or suits brought against the political subdivision or its  
6 employees covered by the policy; and

7 (2) with respect to the maximum liability limitations if the  
8 policy provisions exceed the limitations in section 4 of this  
9 chapter.

10 **The liability insurance policy may not provide for an exception to**  
11 **its maximum liability limitations on the basis that the liability is**  
12 **subject to this chapter.** However, the insurer may not enter into a  
13 settlement for an amount that exceeds the insurance coverage without  
14 the approval of the mayor, if the claim or suit is against a city, or the  
15 governing body of any other political subdivision, if the claim or suit  
16 is against such political subdivision.

17 (b) The state may not purchase insurance to cover the liability of the  
18 state or its employees. This subsection does not prohibit any of the  
19 following:

20 (1) The requiring of contractors to carry insurance.

21 (2) The purchase of insurance to cover losses occurring on real  
22 property owned by the public employees' retirement fund or the  
23 Indiana state teachers' retirement fund.

24 (3) The purchase of insurance by a separate body corporate and  
25 politic to cover the liability of itself or its employees.

26 (4) The purchase of casualty and liability insurance for foster  
27 parents (as defined in IC 27-1-30-4) on a group basis.

28 **SECTION 4. [EFFECTIVE JANUARY 1, 2002] IC 27-1-29-14 and**  
29 **IC 34-13-3-4, both as amended by this act, apply only to a cause of**  
30 **action that accrues after December 31, 2001. IC 34-13-3-20, as**  
31 **amended by this act, applies only to liability insurance policies**  
32 **issued or renewed after December 31, 2001.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1248, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

STURTZ, Chair

Committee Vote: yeas 9, nays 2.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1248, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 27-1-29-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 14. (a) In order to be eligible for payment under this chapter, a liability of a political subdivision must arise out of a claim based upon an act or omission that takes place while the political subdivision is a member of the fund.

(b) The maximum amount payable from the fund for any liability, whether or not it is covered under IC 34-13-3 (or IC 34-4-16.5 before its repeal), is:

- (1) ~~three~~ **seven** hundred thousand dollars (~~\$300,000~~) (**\$700,000**) for injury, death, or damage suffered by any one (1) person as a result of the act or omission from which the liability arises; and
- (2) one million dollars (\$1,000,000) for all injury, death, or damage suffered by all persons as a result of the act or omission from which the liability arises.

(c) No amount may be paid from the fund in respect of punitive damages paid by or assessed against a member of the fund.

(d) No amount may be paid from the fund in the case of a liability based upon bodily injury or property damage arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials, or other irritants, contaminants, or pollutants into or upon land, the atmosphere, or any watercourse or body of water unless the discharge, dispersal, release, or escape:

- (1) is caused by an act or omission of a political subdivision that is a member of the fund; and
- (2) occurs as a result of:
  - (A) a household hazardous waste; or
  - (B) a conditionally exempt small quantity generator (as described in 40 CFR 261.5(a); collection, disposal, or recycling project conducted by or controlled by the political subdivision.

(e) The commissioner may pay a liability of a member of the fund in a series of annual payments. The amount of any annual payment under this subsection must be one hundred thousand dollars (\$100,000) or more, except for the final payment in a series of payments.

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(f) The commission may negotiate a structured settlement of any claim.

(g) As used in this section, "household hazardous waste" means solid waste generated by households that consists of or contains a material that is:

- (1) ignitable, as described in 40 CFR 261.21;
- (2) corrosive, as described in 40 CFR 261.22;
- (3) reactive, as described in 40 CFR 261.23; or
- (4) toxic, as described in 40 CFR 261.24."

Page 1, line 6, delete "one million two" and insert "**seven**".

Page 1, line 6, delete "fifty".

Page 1, line 7, delete "(\$1,250,000)" and insert "**(\$700,000)**".

Page 1, line 8, reset in roman "five".

Page 1, line 8, delete "ten".

Page 1, line 8, reset in roman "(\$5,000,000)".

Page 1, line 9, delete "(\$10,000,000)".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1248 as introduced.)

BAUER, Chair

Committee Vote: yeas 22, nays 0.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred House Bill No. 1248, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 9, delete "seven" and insert "**five**".

Page 1, line 9, delete "(\$700,000)" and insert "**(\$500,000)**".

Page 2, line 33, delete "seven" and insert "**five**".

Page 2, line 33, delete "(\$700,000)" and insert "**(\$500,000)**".

Page 2, between lines 37 and 38, begin a new paragraph and insert:  
 "SECTION 3. IC 34-13-3-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 20. (a) A political subdivision may purchase insurance to cover the liability of itself or its employees. Any liability insurance so purchased shall be purchased by invitation to and negotiation with providers of insurance and may be purchased with other types of insurance. If such a policy is purchased, the terms of the policy govern:

- (1) the rights and obligations of the political subdivision and the insurer with respect to the investigation, settlement, and defense of claims or suits brought against the political subdivision or its employees covered by the policy; **and**
- (2) **with respect to the maximum liability limitations if the policy provisions exceed the limitations in section 4 of this chapter.**

**The liability insurance policy may not provide for an exception to its maximum liability limitations on the basis that the liability is subject to this chapter.** However, the insurer may not enter into a settlement for an amount that exceeds the insurance coverage without the approval of the mayor, if the claim or suit is against a city, or the governing body of any other political subdivision, if the claim or suit is against such political subdivision.

(b) The state may not purchase insurance to cover the liability of the state or its employees. This subsection does not prohibit any of the following:

- (1) The requiring of contractors to carry insurance.
- (2) The purchase of insurance to cover losses occurring on real property owned by the public employees' retirement fund or the Indiana state teachers' retirement fund.
- (3) The purchase of insurance by a separate body corporate and politic to cover the liability of itself or its employees.
- (4) The purchase of casualty and liability insurance for foster

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parents (as defined in IC 27-1-30-4) on a group basis."

Page 2, line 38, delete "This act applies" and insert "**IC 27-1-29-14 and IC 34-13-3-4, both as amended by this act, apply**".

Page 2, line 39, after "." insert "**IC 34-13-3-20, as amended by this act, applies only to liability insurance policies issued or renewed after December 31, 2001.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1248 as printed February 22, 2001.)

LONG, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Mr. President: I move that Engrossed House Bill 1248 be reassigned to the Committee on Finance.

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